

## **CALIFORNIA LITIGATION:**

**Editor's Foreword, Volume 11, Number 3**  
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### **Emerging Issues**

By Russell Leibson

The pace of change in many areas of the law continues to accelerate. Staying abreast of such changes is proving to be one of the more difficult challenges faced by lawyers and judges alike. This issue looks at "Emerging Issues," including articles on the future of the appellate process, appellate ADR, new developments in regulatory law, ADR after the *Engalla* decision, and a host of other issues.

Attesting to the importance of these "emerging issues," and the debate they engender, we are indeed fortunate to feature perspectives from no less than four judges — a trial judge, a sitting Court of Appeal judge, and two retired appellate judges.

*The Hon. William F. Rylaarsdam* looks at the future of the appellate process in California. The soaring number of appeals, especially in criminal cases, is one of the more difficult challenges appellate judges face. A system which combines early screening of non-meritorious appeals combined with more efficient methods for dealing with such appeals presents the best hope for maintaining the integrity of our appellate system in the face of ever increasing workloads.

*David S. Rand*, recipient of the California plaintiffs' trial bar's 1997 Presidential Award of Merit for his work on *Engalla v. The Permanente Medical Group*, looks at the fallout from the Supreme Court's landmark decision on ADR and discusses recent proposals to cure the evils of one-sided mandatory arbitration programs.

*The Hon. Charles W. Froehlich, Jr.* and *the Hon. Howard B. Wiener*, retired appellate judges, discuss their experiences trying to graft private ADR onto the appellate process, suggesting ways to improve the process.

*Joseph D. Lee* and *Antony G. Page* examine the use and admissibility of "high tech" evidence in the courtroom. From their perspective, courts grappling with computer-generated evidence have struggled, with mixed success, to balance the effectiveness of such evidence in explaining complex concepts to lay juries against the potential for undue influence and abuse.

*Orlie L. Curtis* addresses the recovery of attorneys' fees in insurance coverage declaratory relief actions. In California, an insurer is not responsible for its insureds' attorneys' fees unless the declaratory relief action was brought in bad faith. He opines that a better avenue to recover fees may be a malicious prosecution case against an insurer that brings, and loses, a declaratory relief action.

*Gerald E. Boltz* and *Michelle D. Boydston* explore recent developments in regulatory law, focusing on the SEC and trends in securities law enforcement. In their view, the SEC's vigorous and aggressive enforcement programs are expected to continue given its current staffing and budget levels.

*Tom Corless* and *Kendall Caudry* look at the evolving law applicable to bad faith actions against HMOs. They posit that by assuming a direct role in the delivery of health care to patients, especially by injecting cost considerations in determining appropriate care, managed care organizations may have opened the door to liability under nontraditional legal theories.

*Stephen M. Murphy* offers a war story about how a smoking gun, that rarest of commodities, helped turn the tide in a sex harassment case.

*The Hon. Ellen Moore's* Judicial Opinion addresses the challenges domestic violence and stalking cases present to the courts. How do we distinguish illegal exercise of power and control from "people just being people"? In her view, these cases often force courts, legislators, police and attorneys to draw lines in very murky areas of human behavior.

### — Looking Ahead —

Our next issue looks at "Recurring Issues" in the law, those that continue to baffle, to excite, and to challenge practitioners and judges alike. Like death and taxes, these issues promise to be with us in the future. Among the topics covered will be articles on how to select an appellate lawyer, the "peculiar risk of harm" doctrine, jury reform, sanctions, and what to do if your client dies.

*Russell Leibson, Editor-in-Chief of California Litigation, practices at his own firm in San Francisco.*

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California Litigation is pleased to review original articles submitted for publication.  
(Articles should be 8-10 double-spaced pages, or about 2,000 words. )

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The journal is sent free to members of the Litigation Section.

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